

NON-DEDUCTIBILITY OF THE SO-CALLED «CAPITAL TAX» PAID IN SWITZERLAND FROM THE «CFC» TAX DUE IN ITALY

Italian Tax Authority Ruling no. 70 of 6 March 2026

- ✓ The Italian Tax Authority (hereinafter, the «ITA») provided clarification regarding the possibility for an Italian parent company (Alfa) to deduct from the corporate income tax (hereinafter, the «CIT») due in Italy – pursuant to the Controlled Foreign Companies regime (hereinafter, «CFC») – the so-called «Capital Tax», a tax due on capital and paid by the Swiss controlled company (Beta) carrying out holding activities.
- ✓ In particular, starting from the 2002 tax year, Beta has been treated as a CFC, with the consequent attribution of its income to the resident entity Alfa on a look-through basis, and it is also subject to the Capital Tax. The latter is calculated by multiplying the «taxable capital» – consisting of the sum of certain balance sheet items (such as share capital, legal reserves, retained earnings reserves and «hidden» reserves) resulting at the end of the tax period – by the capital tax rate applicable in the area; the amount thus determined is subsequently multiplied by specific municipal coefficients.
- ✓ The ITA clarified that, in order to benefit from the foreign tax credit mechanism provided by Article 165 of the Italian Income Tax Code (so-called, «TUIR»), income produced abroad must be included in the overall taxable income of the resident entity Alfa (so-called, «inclusion principle»). Furthermore, a preliminary assessment must be carried out regarding the nature of the tax and its possible qualification as, or equivalence to, an income tax. Based on the elements provided, the ITA stated that the Capital Tax cannot be classified as an income tax and, therefore, cannot be claimed as a foreign tax credit within the scope of the CFC rules.
- ✓ In the case at hand, the ITA concluded that:
 - the Capital Tax does not fall within the category of income taxes referred to in the Double Taxation Convention between Italy and Switzerland, nor does it present elements allowing it to be treated as «*other foreign taxes on income*» (according to the interpretation of Article 165 TUIR provided by Article 15, paragraph 2 of Legislative Decree No. 147 of 14 September 2015). Indeed, it is a tax levied on the net equity of the Swiss company, determined on the basis of its financial statements;
 - the Double Taxation Convention between Italy and Switzerland already provides, under letter (c) of the Additional Protocol, a specific foreign tax credit mechanism for capital taxes, also consistent with the *inclusion principle*, since «*should a tax on capital be introduced in Italy in the future, the Swiss tax on capital – i.e., the Capital Tax – levied in accordance with the provisions of the Convention shall be deducted from such Italian tax on capital*».